



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation</b>	Article 39, Article 42, Article 49, and Article 50 of 9VAC5-40, Part II
<b>Regulation title</b>	Regulations for the Control and Abatement of Air Pollution
<b>Action title</b>	Repeal of Consumer Products ( Rev. A12)
<b>Date this document prepared</b>	March 27, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

Articles 39, 42, 49, and 50 of 9VAC5-40 (Existing Stationary Sources) are consumer product regulations that reduce volatile organic compound (VOC) emissions to the atmosphere. Article 39 controls VOC emissions from asphalt paving operations throughout Virginia. Within the Northern Virginia and Fredericksburg VOC Control Areas, Article 42 controls VOC emissions from portable fuel container spillage, Article 49 controls VOC emissions from architectural and industrial maintenance coatings, and Article 50 controls VOC emissions from consumer products.

The provisions of Articles 39, 42, 49 and 50 have been duplicated and updated in a new chapter, 9VAC5-45 (Consumer and Commercial Products). This regulatory action repeals the older, outdated consumer product regulations in 9VAC5-40.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On March 23, 2012 the State Air Pollution Control Board:

1. Authorized the department to promulgate the attached proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Authorized the Department to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

### Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

### Identification of Specific Applicable Federal Requirements

Ozone is formed by complex series of reactions between nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) under the influence of solar ultraviolet radiation (sunlight). Ozone shows a very strong diurnal (daily) and seasonal (April to October) cyclical character. Ozone injures vegetation, has adverse effects on materials (rubber and fabrics), and is a pulmonary irritant that affects respiratory mucous membranes, lung tissues, and respiratory functions.

The original ozone air quality standard that was the focus of air quality planning requirements after the promulgation of the 1990 Amendments to the Clean Air Act was a 1-hour standard. Since then, EPA has promulgated a new 8-hour ozone air quality standard, and associated designation of nonattainment areas, which necessitates the initiation of new plans and regulatory actions.

40 CFR Part 81 specifies the designations of areas made under § 107(d) of the CAA and the associated nonattainment classification (if any) under § 181 of the CAA or 40 CFR 51.903(a), as applicable. On April 30, 2004 (69 FR 23858), EPA published its final decision as to the 8-hour nonattainment areas and associated classifications. The new designations are effective June 15, 2004. The Commonwealth of Virginia designations are in 40 CFR 81.347.

40 CFR Part 51, Subpart X, contains the provisions for the implementation of the 8-hour ozone NAAQS, along with the associated planning requirements. On April 30, 2004 (69 FR 23951), EPA published phase 1 of its final rule adding Subpart X to 40 CFR Part 51. Specifically, 40 CFR 51.903(a) sets forth

the classification criteria and nonattainment dates for 8-hour ozone nonattainment areas once they are designated as such under 40 CFR Part 81. The remainder of the planning requirements (phase 2) were published on November 29, 2005 (70 FR 71612).

On March 27, 2008 (73 FR 16436), EPA published revised primary and secondary ozone NAAQS, revising both downward to 0.075 ppm. EPA has yet to publish implementation guidance for the change. States have until March 12, 2009 to recommend new nonattainment areas under the new standards.

The state regulations established VOC and NO<sub>x</sub> emissions control areas to provide the legal mechanism to define the geographic areas in which Virginia implements control measures to attain and maintain the air quality standards for ozone. The emissions control areas may or may not coincide with the nonattainment areas, depending on the necessity of the planning requirements.

#### General Federal Requirements

Sections 109 (a) and (b) of the Clean Air Act (CAA) require EPA to prescribe primary and secondary air quality standards to protect public health and welfare, respectively, for each air pollutant for which air quality criteria were issued before the enactment of the 1970 Clean Air Act. These standards are known as the National Ambient Air Quality Standards (NAAQS). Section 109 (c) requires the U.S. Environmental Protection Agency (EPA) to prescribe such standards simultaneously with the issuance of new air quality criteria for any additional air pollutant. The primary and secondary air quality criteria are authorized for promulgation under § 108.

Once the NAAQS are promulgated pursuant to § 109, § 107(d) sets out a process for designating those areas that are in compliance with the standards (attainment or unclassifiable) and those that are not (nonattainment). Governors provide the initial recommendations but EPA makes the final decision. Section 107(d) also sets forth the process for redesignations once the nonattainment areas are in compliance with the applicable NAAQS.

Section 110(a) of the CAA mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

(1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;

(2) establish schedules for compliance;

(3) prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and

(4) require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

40 CFR Part 50 specifies the NAAQS: sulfur dioxide, particulate matter, carbon monoxide, ozone (its precursors are nitrogen oxides and volatile organic compounds), nitrogen dioxide, and lead.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the

standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and record-keeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans.

Section 51.230 under Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

- (1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
- (2) enforce applicable laws, regulations, and standards, and seek injunctive relief;
- (3) abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;
- (4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;
- (5) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require record-keeping and to make inspections and conduct tests of air pollution sources;
- (6) require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and
- (7) make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority as follows:

- (1) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and
- (2) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

Part D describes how nonattainment areas are established, classified, and required to meet attainment. Subpart 1 provides the overall framework of what nonattainment plans are to contain, while Subpart 2 provides more detail on what is required of areas designated nonattainment for ozone.

Section 171 defines "reasonable further progress," "nonattainment area," "lowest achievable emission rate," and "modification."

Section 172(a) authorizes EPA to classify nonattainment areas for the purpose of assigning attainment dates. Section 172(b) authorizes EPA to establish schedules for the submission of plans designed to achieve attainment by the specified dates. Section 172(c) specifies the provisions to be included in each attainment plan, as follows:

- (1) the implementation of all reasonably available control measures as expeditiously as practicable and shall provide for the attainment of the national ambient air quality standards;
- (2) the requirement of reasonable further progress;
- (3) a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutants in the nonattainment area;
- (4) an identification and quantification of allowable emissions from the construction and modification of new and modified major stationary sources in the nonattainment area;
- (5) the requirement for permits for the construction and operations of new and modified major stationary sources in the nonattainment area;
- (6) the inclusion of enforceable emission limitations and such other control measures (including economic incentives such as fees, marketable permits, and auctions of emission rights) as well as schedules for compliance;
- (7) if applicable, the proposal of equivalent modeling, emission inventory, or planning procedures; and
- (8) the inclusion of specific contingency measures to be undertaken if the nonattainment area fails to make reasonable further progress or to attain the national ambient air quality standards by the attainment date.

Section 172(d) requires that attainment plans be revised if EPA finds inadequacies. Section 172(e) authorizes the issuance of requirements for nonattainment areas in the event of a relaxation of any national ambient air quality standard. Such requirements shall provide for controls which are not less stringent than the controls applicable to these same areas before such relaxation.

Section 107(d)(3)(D) provides that a state may petition EPA to redesignate a nonattainment area as attainment and EPA may approve the redesignation subject to certain criteria being met. Section 107(d)(3)(E) stipulates one of these criteria, that EPA must fully approve a maintenance plan that meets the requirements of § 175A.

According to § 175A(a), the maintenance plan must be part of a SIP submission, and must provide for maintenance of the NAAQS for at least 10 years after the redesignation. The plan must contain any additional measures, as needed, to ensure maintenance. Section 175A(b) further requires that 8 years after redesignation, a maintenance plan for the next 10 years must then be submitted. As stated in § 175A(c), nonattainment requirements continue to apply until the SIP submittal is approved. Finally, § 175A(d) requires that the maintenance plan contain contingency provisions which will be implemented should the area fail to maintain the NAAQS as provided for in the original plan.

Under Part D, Subpart 2, § 181 sets forth the classifications and nonattainment dates for 1-hour ozone nonattainment areas once they are designated as such under § 107(d).

Section 182(a)(2)(A) requires that the existing regulatory program requiring reasonably available control technology (RACT) for stationary sources of volatile organic compounds (VOCs) in marginal nonattainment areas be corrected by May 15, 1991, to meet the minimum requirements in existence prior to the enactment of the 1990 amendments. RACT is the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering

technological and economic feasibility. EPA has published control technology guidelines (CTGs) for various types of sources, thereby defining the minimum acceptable control measure or RACT for a particular source type.

Section 182(b) requires stationary sources in moderate nonattainment areas to comply with the requirements for sources in marginal nonattainment areas. The additional, more comprehensive control measures in §182(b)(2)(A) require that each category of VOC sources employ RACT if the source is covered by a CTG document issued between enactment of the 1990 amendments and the attainment date for the nonattainment area. Section 182(b)(2)(B) requires that existing stationary sources emitting VOCs for which a CTG existed prior to adoption of the 1990 amendments also employ RACT.

Section 182(c) requires stationary sources in serious nonattainment areas to comply with the requirements for sources in both marginal and moderate nonattainment areas.

Section 182(d) requires stationary sources in severe nonattainment areas to comply with the requirements for sources in marginal, moderate and serious nonattainment areas.

Section 182(f) extends the requirements for the control of VOC emissions to emissions of NOx.

Section 184 establishes an Ozone Transport Region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia. The Ozone Transport Commission is to assess the degree of interstate transport of the pollutant or precursors to the pollutant throughout the transport region, assess strategies for mitigating the interstate pollution, and to recommend control measures to ensure that the plans for the relevant States meet the requirements of the Act.

40 CFR Part 81 specifies the designations of areas made under § 107(d) of the CAA and the associated nonattainment classification (if any) under § 181 of the CAA or 40 CFR 51.903(a), as applicable.

EPA has issued detailed guidance that sets out its preliminary views on the implementation of the air quality planning requirements applicable to nonattainment areas. This guidance is titled the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (or "General Preamble"). See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The General Preamble has been supplemented with further guidance on Title I requirements. See 57 FR 55621 (Nov. 25, 1992) (guidance on NOx RACT requirements in ozone nonattainment areas). For this subject, the guidance provides little more than a summary and reiteration of the provisions of the Act.

On June 21, 2001, EPA issued formal guidelines for the "Ozone Flex Program." These guidelines set out eligibility requirements, what measures may be taken and how, and how localities, states and EPA are to develop and implement early reduction plans. On November 14, 2002, EPA issued a schedule for 8-hour ozone designations and its effect on early action compacts for potential 8-hour nonattainment areas.

40 CFR Part 51, Subpart X, contains the provisions for the implementation of the 8-hour ozone NAAQS, along with the associated planning requirements. Specifically, 40 CFR 51.903(a) sets forth the classification criteria and nonattainment dates for 8-hour ozone nonattainment areas once they are designated as such under 40 CFR Part 81.

#### State Requirements

These specific amendments are not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308 A). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant

life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300).

The Air Pollution Control Law (§ 10.1-1308 B) specifically requires that any regulation that prohibits the selling of a consumer product not restrict the continued sale of the product by retailers of any existing inventories in stock at the time the regulation is promulgated.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of Articles 39, 42, 49, and 50 of 9VAC5-40 was to require owners to limit emissions of VOC, a precursor of ambient air ozone, from portable fuel containers, certain consumer products, architectural and industrial maintenance coatings and paving operations to the level necessary for (i) the protection of public health and welfare, and (ii) the attainment and maintenance of the air quality standards in Virginia and in the northern Virginia nonattainment area.

On November 20, 2009 the board adopted revised consumer and commercial product regulations in a new chapter 45, which became effective on March 17, 2010. These regulations were adopted to allow Virginia to meet its obligation to implement control measures in areas designated as nonattainment under the 8-hour ozone standard and to implement contingency measures within former nonattainment areas that have been redesignated as ozone maintenance areas. The purpose of adopting new regulations in a new Chapter 45 was to consolidate the consumer and commercial product regulations to make it easier for the regulated entities and the public to locate and use the applicable regulations.

The purpose of repealing the original four consumer product regulations in 9VAC5-40 is to remove the outdated, less restrictive requirements in Chapter 40 that duplicate and conflict with the corresponding updated articles that were consolidated into the new Chapter 45. Repealing the earlier regulations will complete the process of consolidation.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (1) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

There are more comprehensive and more restrictive consumer product requirements in 9VAC5 Chapter 45 that correspond to 9VAC5-40 Articles 39, 42, 49, and 50 that are effective and have already been federally approved. Therefore, no objections to the repeal of the 9VAC5 Chapter 40 consumer products requirements in Articles 39, 42, 49 and 50 are anticipated and the fast-track process is appropriate.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

Article 39 (Emission Standards for Asphalt Paving Operations) of 9VAC5-40 is repealed in its entirety: the applicability provisions; the definitions; the VOC standards; the visible emission and fugitive dust standards; the standards for odor and toxics; the compliance provisions; the test methods and procedures; the monitoring provisions; and the notification, records and reporting provisions. It has been replaced by Article 7 of 9VAC5-45, which contains updated provisions for controlling emissions from asphalt paving operations.

Article 42 (Emission Standards for Portable Fuel Container Spillage) of 9VAC5-40 is repealed in its entirety: the applicability provisions; the definitions; the VOC standards; the administrative requirements; the compliance and compliance schedule provisions; the test methods and procedures; the monitoring provisions; and the notification, records and reporting provisions. It has been replaced by Articles 1 and 2 of 9VAC5-45, which contain revised provisions for controlling emissions from portable fuel containers.

Article 49 (Emissions Standards for Architectural and Industrial Maintenance Coatings) of 9VAC5-40 is repealed in its entirety: the applicability provisions; the definitions; the VOC standards; the container labeling requirements; the visible emission and fugitive dust standards; the standards for odor and toxics; the compliance and compliance schedule provisions; the test methods and procedures; the monitoring provisions; and the notification, records and reporting provisions. It has been replaced by Article 5 of 9VAC5-45, which contains updated provisions for controlling emissions from architectural and industrial maintenance coatings.

Article 50 (Emissions Standards for Consumer Products) of 9VAC5-40 is repealed in its entirety: the applicability provisions; the exemptions; the definitions; the VOC standards; the alternative control plan (ACP) provisions; the innovative product provisions; the administrative requirements; the standard for toxic pollutants; the compliance and compliance schedule provisions; the test methods and procedures; the monitoring provisions; and the notification, records and reporting provisions. It has been replaced by Articles 3 and 4 of 9VAC5-45, which contain revised provisions for controlling emissions from consumer products.

The provisions of 9VAC5-45 (Consumer and Commercial Products) are not affected by this repeal.

## Issues

*Please identify the issues associated with the proposed regulatory action, including: (1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; (2) the primary advantages and disadvantages to the agency or the Commonwealth; and (3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

1. Public: The primary advantage to the public is the removal of duplicative and conflicting regulatory regulations, which improves the public's ability to understand and comply with the most effective regulatory requirements. There are no disadvantages to the public.

2. Department: The primary advantage to the department is the removal of regulations that are no longer necessary. There are no disadvantages to the department.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

The proposed regulation amendments are not more restrictive than the applicable legal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There is no locality which will bear any identified disproportionate material air quality impact due to the repeal of these regulations that would not be experienced by other localities.

**Public participation**

*Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community, and the impacts of the regulation on farm or forest land preservation.*

In addition to any other comments, the Department is seeking comments on the costs and benefits of the proposal, the impacts on the regulated community, and impacts of the regulation on farm or forest land preservation. Also, the Department is seeking information on impacts to small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the proposal on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the proposal.

Anyone wishing to submit written comments may do so by mail, email, or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week.

All comments requested by this document must be submitted to the agency contact: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov), phone 804-698-4103).

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

With the repeal of Articles 39, 42, 49, and 50 of 9VAC5-40, the corresponding provisions of 9VAC Chapter 45 (Articles 1, 2, 3, 4, 5, and 7) still meet all of the minimum requirements of the federal Clean Air Act. A failure to repeal any portion of 9VAC5-40, Articles 39, 42, 49, or 50 of 9VAC5-40 could lead to confusion on the part of regulated entities, planning groups, and communities, and would compromise the effectiveness of the Chapter 45 requirements in protecting the health and welfare of the public.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures.</b>	It is not expected that the repeal of these regulations will result in any cost to the Department.
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	There are no projected costs to localities resulting from the repeal of thee regulations.
<b>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	The entities that could be affected by the repeal of this regulation are companies and members of the public that provide asphalt paving services; companies and members of the public that use or consume portable fuel containers, architectural coatings, or consumer products; and companies that manufacture or supply asphalt paving products, portable fuel containers, architectural coatings, or consumer products; and businesses that apply asphalt pavement surfaces and coatings or architectural coatings. None are likely to be affected because more restrictive regulations already apply.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than	There are as many as 3250 small businesses that might have an interest in the repeal of these regulations, but none would be affected in any significant way because there are equivalent, more restrictive regulations already in place.

<p>500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>Because there are equivalent, more restrictive regulations already in place, there are no projected costs of any kind to any individual, business or other entity that would result from the repeal of these regulations.</p>

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

1. Repeal Articles 39, 42, 49, and 50 of 9VAC5-40 and thereby satisfy the provisions of the law and associated regulations and policies. This option was chosen because it makes the state regulations administratively correct and it meets the purpose of the regulation: to effectively and efficiently protect public health and welfare.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because it would not meet the requirements of federal law and regulation and would place unreasonable compliance and administrative burdens on any companies that would have to comply with conflicting requirements.
3. Take no action to repeal or amend the regulations and continue to keep both sets of consumer and commercial product requirements effective. This option was not chosen because the newer, more restrictive requirements of 9VAC5-45 conflict with the requirements of 9VAC5-40, and would lead to compliance issues for affected businesses and create confusion on the part of the regulated public.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: (1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; (2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; (3) strengthen or erode the marital commitment; and (4) increase or decrease disposable family income.*

It is not anticipated that these regulation amendments will have a direct impact on families.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes made to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
<b>9VAC5-40, Part II, Article 39, Emission Standards for Asphalt Paving Operations</b>			
40-5490		Applicability and designation of affected facility.	Repeal. These provisions are duplicated and updated in 9VAC5-45-760.
40-5500		Definitions.	Repeal. These provisions are duplicated and updated in 9VAC5-45-770.
40-5510		Standard for volatile organic compounds.	Repeal. These provisions are duplicated and updated in 9VAC5-45-780.
40-5520		Standard for visible emissions.	Repeal. These provisions are duplicated and updated in 9VAC5-45-790.
40-5530		Standard for fugitive dust/emissions.	Repeal. These provisions are duplicated and updated in 9VAC5-45-800.
40-5540		Standard for odor.	Repeal. These provisions are duplicated and updated in 9VAC5-45-810.
40-5550		Standard for toxic pollutants.	Repeal. These provisions are covered adequately by 9VAC5-60, Articles 4 and 5.
40-5560		Compliance.	Repeal. These provisions are duplicated and updated in 9VAC5-45-760.
40-5570		Test methods and procedures.	Repeal. These provisions are duplicated and updated in 9VAC5-45-760.
40-5580		Monitoring.	Repeal. These provisions are duplicated and updated in 9VAC5-45-760.
40-5590		Notification, records and reporting.	Repeal. These provisions are duplicated and updated in 9VAC5-45-760.
<b>9VAC5-40, Part II, Article 42, Emission Standards for Portable Fuel Container Spillage</b>			
40-5700		Applicability.	Repeal. These provisions are duplicated and revised in 9VAC5-45-60, 9VAC5-45-70, 9VAC5-45-160 and 9VAC5-45-170.
40-5710		Definitions.	Repeal. These provisions are duplicated and revised in 9VAC5-45-80 and 9VAC5-45-180.
40-5720		Standard for volatile organic compounds.	Repeal. These provisions are duplicated and revised in 9VAC5-45-90 and 9VAC5-45-190.
40-5730		Administrative requirements.	Repeal. These provisions are duplicated and revised in 9VAC5-45-100, 9VAC5-45-200, and 9VAC5-45-220.
40-5740		Compliance.	Repeal. These provisions are duplicated and revised in 9VAC5-45-110 and 9VAC5-45-230.

40-5750		Compliance schedule.	Repeal. These provisions are duplicated and revised in 9VAC5-45-120 and 9VAC5-45-240.
40-5760		Test methods and procedures.	Repeal. These provisions are duplicated and revised in 9VAC5-45-130 and 9VAC5-45-250.
40-5770		Notification, records and reporting.	Repeal. These provisions are duplicated and revised in 9VAC5-45-150 and 9VAC5-45-270.
9VAC5-40, Part II, Article 49, Emission Standards for Architectural and Industrial Maintenance Coatings			
40-7120		Applicability.	Repeal. These provisions are duplicated and updated in 9VAC5-45-520 and 9VAC5-45-530.
40-7130		Definitions.	Repeal. These provisions are duplicated and updated in 9VAC5-45-540.
40-7140		Standard for volatile organic compounds.	Repeal. These provisions are duplicated and updated in 9VAC5-45-550.
40-7150		Container labeling requirements.	Repeal. These provisions are duplicated and updated in 9VAC5-45-560.
40-7160		Standard for visible emissions.	Repeal. These provisions are adequately covered by 9VAC5-40-80 and 9VAC5-50-80.
40-7170		Standard for fugitive dust/emissions.	Repeal. These provisions are adequately covered by 9VAC5-40-90 and 9VAC5-50-90.
40-7180		Standard for odor.	Repeal. These provisions are adequately covered by 9VAC5-40-140 and 9VAC5-50-140.
40-7190		Standard for toxic pollutants.	Repeal. These provisions are covered adequately by 9VAC5-60, Articles 4 and 5.
40-7200		Compliance.	Repeal. These provisions are duplicated and updated in 9VAC5-45-570.
40-7210		Compliance schedules.	Repeal. These provisions are duplicated and updated in 9VAC5-45-580.
40-7220		Test methods and procedures.	Repeal. These provisions are duplicated and updated in 9VAC5-45-590.
40-7230		Notification, records and reporting.	Repeal. These provisions are duplicated and updated in 9VAC5-45-610.
9VAC5-40, Part II, Article 50, Emission Standards for Consumer Products			
40-7240		Applicability.	Repeal. These provisions are duplicated and revised in 9VAC5-45-280 and 9VAC5-45-400.
40-7250		Exemptions.	Repeal. These provisions are duplicated and revised in 9VAC5-45-290 and 9VAC5-45-410.
40-7260		Definitions.	Repeal. These provisions are duplicated and revised in 9VAC5-45-300 and 9VAC5-45-420.
40-7270		Standard for volatile organic compounds.	Repeal. These provisions are duplicated and revised in 9VAC5-45-310 and 9VAC5-45-430.
40-7280		Alternative control plan (ACP) for consumer products.	Repeal. These provisions are duplicated and revised in 9VAC5-45-320 and 9VAC5-45-440.
40-7290		Innovative products.	Repeal. These provisions are duplicated and revised in 9VAC5-45-330 and 9VAC5-45-450.

40-7300		Administrative requirements.	Repeal. These provisions are duplicated and revised in 9VAC5-45-340 and 9VAC5-45-460.
40-7310		Standard for toxic pollutants.	Repeal. These provisions are covered adequately by 9VAC5-60, Articles 4 and 5.
40-7320		Compliance.	Repeal. These provisions are duplicated and revised in 9VAC5-45-350 and 9VAC5-45-470.
40-7330		Compliance schedules.	Repeal. These provisions are duplicated and revised in 9VAC5-45-360 and 9VAC5-45-480.
40-7340		Test methods and procedures.	Repeal. These provisions are duplicated and revised in 9VAC5-45-370 and 9VAC5-45-490.
40-7350		Monitoring.	Repeal. These provisions are duplicated and revised in 9VAC5-45-380 and 9VAC5-45-500.
40-7360		Notification, records and reporting.	Repeal. These provisions are duplicated and revised in 9VAC5-45-390 and 9VAC5-45-510.

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